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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 MICHAEL W. ELLSWORTH,

12 Petitioner,

13 v.

14 STEVE SINCLAIR,

15 Respondent.

Case No. C08-5397 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
WRIT OF HABEAS CORPUS WITH
PREJUDICE


16 The Magistrate Judge recommends this habeas corpus petition be denied and dismissed with
17 prejudice as barred by the statute of limitations, 28 U.S.C. § 2244(d). Petitioner has filed an
18 objection. As detailed by the Magistrate Judge, the one-year statute of limitations has run and the
19 habeas corpus petition is time-barred. Additionally, Petitioner has provided no evidence supporting
20 equitable tolling in this matter. Equitable tolling of the AEDPA's statute of limitations "is justified in
21 few cases", and is permissible only if "extraordinary circumstances beyond a prisoner's control make
22 it impossible to file a petition on time." Spitsyn v. Moore, 345 F.3d 796 (9th Cir. 2003). Petitioner
23 has failed to make this showing.

24 The Court, having reviewed petitioner's petition for writ of habeas corpus, the Report and
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1 Recommendation of Magistrate Judge Karen L. Strombom, Petitioner's objections, and the
2 remaining record, does hereby find and ORDER:

- 3 (1) The Court adopts the Report and Recommendation;
- 4 (2) Petitioner's writ of habeas corpus [Dkt. #8 and #11] is **DISMISSED WITH**
5 **PREJUDICE**; and
- 6 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for
7 Respondent and to the Hon. Karen L. Strombom.

8 DATED this 5th day of January, 2009.

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12 FRANKLIN D. BURGESS
13 UNITED STATES DISTRICT JUDGE
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